

Qualifying as a start-up as per the Indian Patent Rules

Introduction

The Indian Government has announced various initiatives to promote start-ups. One such initiative brings various benefits to start-ups in their patenting initiatives. The benefits primarily correspond to discounts in government fees and [expediting of patent examination](#). The government fees charged for start-ups will be the same as that charged for natural persons (individuals). In this article, we discuss the criteria to be met by an entity, regardless of whether the entity is Indian or not, to qualify as a start-up.

Note that at the time of writing this article the [amended rules](#), under which these benefits are being provided, was released one day before (May 16, 2016). Hence, there could be changes in the way these rules are interpreted going forward.

Criteria to qualify as start-up

Most of the criteria are objective, with one criterion being subjective in nature. To begin with the objective criteria are listed as questions, and if the answer to each of the below listed questions is in the affirmative (yes), then the entity qualifies as a start-up.

1. Is the applicant for a patent a Private Limited company **as defined** in the Companies Act, 2013 or a registered partnership firm **registered** under section 59 of the Partnership Act, 1932 or a limited liability partnership **under** the Limited Liability Partnership Act, 2002?

Explanation: At present, it appears that Non-Indian partnership and limited liability partnership firms may not qualify as start-ups, since registration in India of such firms appear to be mandatory to claim benefits. However, a Non-Indian entity as long as it meets the definition of a “Private Limited Company” as defined in the Companies Act, 2013, can qualify as start-up. The definition is provided below.

“private company” means a company having a minimum paid-up share capital of one lakh rupees (USD 1515 at conversion rate of USD 1 = INR 66) or such higher paid-up share capital as may be prescribed, and which by its articles,—

➤ *restricts the right to transfer its shares;*

➤ *except in case of One Person Company, limits the number of its members to two hundred:*

• *Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:*

• *Provided further that—*

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

➤ *prohibits any invitation to the public to subscribe for any securities of the company;*

2. Has the entity been registered or incorporated within the last five years?
3. Has the turnover of the entity in each of the financial year in the last five years been less than INR Twenty five crores (USD 3787878 at conversion rate of USD 1 = INR 66)?
4. Has the entity been formed without splitting up or reconstructing a business, which was already in existence?

The entity has to provide evidence in support of the above listed criteria to be recognized as start-up. The evidence for an Indian entity can include registration or incorporation certificate, and Balance sheet/Income tax acknowledgment for the corresponding years. Whether a declaration by a Chartered accountant regarding the income of the company be accepted is yet to be determined. A foreign entity may provide equivalent documents as evidence.

Further, with regards to the subjective criterion, an entity to qualify as start-up should be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property. The criterion is considered to be met if the entity aims to develop and commercialise a new product or service



or process, or a significantly improved existing product or service or process that will create or add value for customers or workflow. The entity may provide evidence supporting its claim to have met this criterion by providing a declaration mentioning that based on the patent application that is being currently filed they are working towards developing and commercializing a new product or service or process, or a significantly improved existing product or service or process that will create or add value for customers or workflow.

We hope this article helps patent applicants decide which type of entity they fall under. You may also read our article to know about how to claim [small entity status](#).

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Best regards – Team InvnTree

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